

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

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**June 17, 2005**

**PATRICK FISHER**  
Clerk

DAVID EUGENE EVANS,

Petitioner - Appellant,

v.

DAYTON POPPEL, Warden of  
Lawton Correctional Center,  
ATTORNEY GENERAL OF THE  
STATE OF OKLAHOMA,

Respondents - Appellees.

No. 04-5181  
(N. D. Oklahoma)  
(D.Ct. No. CV-02-293-H(M))

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**ORDER DENYING CERTIFICATE OF APPEALABILITY  
AND DISMISSING APPEAL**

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Before **KELLY, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Petitioner-Appellant David Evans, a state prisoner appearing pro se, seeks a certificate of appealability ("COA") allowing him to appeal the district court's order denying his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Because we determine that Evans has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000), we deny a COA and dismiss the appeal.

The parties are familiar with the facts, and we need not restate them here. On appeal, Evans reasserts the claims he presented below, specifically that (1) there was insufficient evidence to prove the essential elements of trafficking in drugs (after former conviction of two or more felonies), and (2) he received ineffective assistance of trial counsel. After careful consideration of the materials submitted by Evans against a backdrop of the state court record, it is apparent the conclusions of the district court are not reasonably debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); R. Docs. 15, 16.

For substantially the same reasons set forth by the district court, we **DENY** Evans' request for a COA and **DISMISS** the appeal.

**Entered by the Court:**

**Terrence L. O'Brien**  
United States Circuit Judge